Remarks

Claims 1 – 11 are pending in the application.

Claim 2 is objected to for a formality.

Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of Goode, U.S. Patent No. 6,718,552 (hereinafter "Goode").

Claim 2 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 2 of Goode in view of Eldering et al., U.S. Patent No. 7,150,030 (hereinafter "Eldering").

Claims 1 – 5, 7, and 9 – 11 are rejected under 35 U.S.C. §102(b) as being anticipated by Rudrapatna et al., U.S. Patent No. 5,592,470 (hereinafter "Rudrapatna').

Claim 6 is rejected under 35 U.S.C. §103(a) as being unpatentable over Rudrapatna in view of Rao, U.S. Patent No. 5,940,738 (hereinafter "Rao").

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Entry of this Amendment is proper under 37 CFR §1.116 because the amendment: (a) places the application in condition for allowance for the reasons discussed herein; (b) does not raise any new issue requiring further search and/or consideration since the amendments amplify issues previously discussed throughout prosecution; (c) satisfies a requirement of form asserted in the previous Office Action; (d) does not present any additional claims without canceling a corresponding number of finally rejected claims; or (e) places the application in better form for appeal, should an appeal be necessary. The amendment is necessary and was not earlier presented because it is made in response to arguments raised in the final rejection. Entry of the amendment is thus respectfully requested.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code

or simply is clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., simply to avoid the prior art in a way that leaves the claim novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, because a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewritten to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

Claim Objections

Claim 2 is objected to for a formality. Claim 2 has been amended to replace "; and" with "." Accordingly, Applicant respectfully requests to withdraw the objection.

Double Patenting Rejection

Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of Goode.

Claim 2 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 2 of Goode in view of Eldering.

The present double patenting rejections of claims 1 and 2 apply to the claims of the present application in their current form. However, allowable claims have not been determined yet. Accordingly, Applicant respectfully submits that until double patenting

rejections are the only rejections applicable to Applicant's claims, Applicant cannot evaluate the correctness of any double patenting rejection or determine any arguments that might be put forth against such a rejection. Therefore, Applicant will address this ground of rejection once all other grounds of rejection are overcome.

Rejection Under 35 U.S.C. §102

Claims 1 – 5, 7, and 9 – 11

Claims 1 – 5, 7, and 9 – 11 are rejected under 35 U.S.C. §102(b) as being anticipated by Rudrapatna. The rejection is traversed.

In response to Applicants' arguments that Rudrapatna does not teach or suggest at least "a second subset of video broadcast channels," the Examiner reasons that Rudrapatna discloses that "the IBV service is comprised of scheduled video content provided on a broadband broadcast downlink basis potentially to all users (Col 8 lines 59-62; the first subset of video broadcast viewership level greater than a threshold level as characterized as static broadcast) and also is provided to support services such as wireless CATV, Enhanced Pay-Per-View (Col 8 lines 65-66) which can be categorized as the second subset of video broadcast with less viewership level than the first subset of video broadcast with channel dynamic assignment" (see Final Office Action, page 2). Applicants respectfully disagree with the Examiner's interpretation of Rudrapatna.

The portion of Rudrapatna relied upon by the Examiner states:

> Interactive Broadcast Video (IBV) (TDM): This service is comprised of two parts: 1. Scheduled video content provided on a broadband (i.e., 1.5 Mbps to 6 Mbps) broadcast downlink basis potentially to all users [and] 2. A narrowband uplink signal (<2.4 Kbps, via wireless data signaling or ISDN D channel) for service request, payment authorization, etc. IBV is provided to support services such as wireless CATV, Enhanced Pay-per-View, electronic shopping, electronic software distribution, instructional and educational television, multimedia video based information services, etc. IBV uses TDM transmission (emphasis added).

In other words, Rudrapatna describes that IBV includes two parts, where the first part is content provided on downlink signal and the second part is supporting information provided on the uplink signal for supporting various services, including Pay-per-View. However, Rudrapatna does not disclose the two subsets of video channels, where the first subset of video channels represents a first subset video broadcast channels having a first

subscriber viewership level greater than a threshold level while the second subset of video channels represents a second subset of video broadcast channels having a second subscriber viewership level less than that threshold level.

More specifically, of the two disclosed parts of IBV, only one part may be interpreted as including video broadcast channels, i.e., the first part. Further, Rudrapatna does not disclose any viewership threshold levels and, contrary to the Examiner's suggestion, the cited portion does not distinguish between the scheduled content and Pay-per-View content. As known to a person skilled in the relevant art, Pay-per-View is a type of the scheduled content, and thus, is merely a subset of the scheduled content. Therefore, even if the cited portion were to disclose a threshold level such that the viewership level of the scheduled content was above the threshold level, because the Pay-per-View content is the subset of the scheduled content, the viewership level of the Pay-per-View also has to be above such a threshold, unless Rudrapatna were to calculate the viewership level of the Pay-per-View content and the scheduled content independently. If Rudrapatna were to calculate the viewership levels independently, both of the viewership levels still may be above or below the threshold level depending on a particular value of the threshold level. Accordingly, the interpretation of Rudrapatna in which the scheduled content is equated to Applicant's first subset of video broadcast channels with the viewership level greater than a threshold level and the Pay-per-View content is equated to Applicant's second subset of video broadcast channels with the viewership level lesser than the threshold level is simply improper.

Furthermore, as discussed previously, Rudrapatna discloses a method for allocating bandwidth resources by assigning channels in response to varying demand for "different classes of service" (see Rudrapatna, col. 1, line 64). However, "different classes of services" of Rudrapatna cannot be equated to "subsets of channels," and certainly not "subsets of video channels" of Applicant's claim 1. Rather, a "class of service" refers to different types of services, requiring different channel configurations (e.g. wide-band vs. narrow-band, uplink vs. downlink, etc...). Rudrapatna does not disclose that the determination of whether a particular video broadcast channel belongs to a particular service class depends on that channel's subscriber viewership level or on

whether the channel's subscriber viewership level is above or below a certain threshold level.

Rudrapatna differentiates between the following classes:

- "wireless packet signaling channels" (see col. 4, lines 44 – 45; Fig.3, item 301);
- "service class access downlink channels" (see col. 4, lines 54 – 55; Fig. 3, item 303);
- "downlink broadcast video service channels" (see col. 4, lines 55 – 56; Fig. 3, item 304);
- "downlink interactive video on demand channels" (see col. 4, lines 56 – 57; Fig. 3, item 305);
- "guard spectrum" channels (see col. 4, lines 58 – 59; Fig. 3, item 306);
- "uplink narrow band service class access channels" (see col. 4, lines 59 – 60; Fig. 3, item 307); and
- "auxiliary packet response channel" (see col. 4, line 61; Fig. 3, item 308).

However, among these classes only one service class is designated for the video broadcast channels, i.e., item 304. Accordingly, Rudrapatna simply cannot teach or suggest the "second subset of video broadcast channels" of Applicant's claim 1.

Additionally, with respect to the "threshold level" of Applicant's claim 1, the only portion of the Rudrapatna disclosure that mentions any kind of threshold requirements is the discussion of a dynamic channel allocation process (see col. 5, lines 29 – 67). However, the threshold used by Rudrapatna in the dynamic channel allocation process is entirely different from the Applicant's threshold level of claim 1. More specifically, the threshold of Rudrapatna defines a "minimum number of channel blocks ... that may be assigned" to a different service class, or in other words, the number of channels that could be transferred from one service class to another. Applicant's claim 1, in contrast, recites a threshold level that defines a particular subscriber viewership level of the video broadcast channels. Therefore, Rudrapatna does not teach or suggest Applicant's threshold level recited in claim 1.

Accordingly, at least for the reasons discussed above, Rudrapatna fails to teach or suggested each and every element of the claimed invention as arranged in Applicant's

independent claim 1. As such, Applicant's claim 1 is not anticipated by Rudrapatna and is allowable under 35 U.S.C. §102. Furthermore, because all of the dependent claims depending from the independent claims include all the limitations of the respective independent claim from which they ultimately depend, each such dependent claim is not anticipated by Rudrapatna and is allowable under 35 U.S.C. §102.

Applicant respectfully requests the Examiner withdraw the rejection.

Rejection Under 35 U.S.C. §103

Claim 6

Claim 6 is rejected under 35 U.S.C. §103(a) as being unpatentable over Rudrapatna in view of Rao. The rejection is traversed.

This ground of rejection applies only to dependent claims and is predicated on the validity of the rejection under 35 U.S.C. §102 given Rudrapatna. Because the rejection under 35 U.S.C. §102 given Rudrapatna has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that Rao supplies that which is missing from Rudrapatna to render the independent claims anticipated, this ground of rejection cannot be maintained.

Applicant respectfully requests the Examiner withdraw the rejection.

Conclusion

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Eamon Wall at (732) 530-9404 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

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